HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 800/06 (M/S)

Kailash Chandra Durgapal and otherss

Vs.

D.J. Almora and others

Approved for reporting.

Not approved for reporting

Date of decision 18.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRTIT PETITION NO. 800 (MS) OF 2006

1. Kailash Chandra Durgapal,
2. Mahesh Chandra Durgapal,

Sons of late Jagannath Durgapal, R/o Thana Bazar Almora, District-Almora. .....Petitioners.

Versus

1. District Judge, Almora.
2. Prescribed Authority/Civil Judge, (Junior Division), Almora, District –Almora.
3. Deep Lal Sah,
4. Pawan Lal Sah,
5. Bhagwan Lal Sah,
6. Smt. Haripriya Sah, W/o late Chatrapati Sah,

All R/o Thana Bazar, Murli Manohar Mandir, Almora.

.....Respondents.

Dated: 18.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri R.C. Upadhyaya, Advocate for the petitioners, Sri Siddhartha Sah, Advocate for the respondent no. 4 and Standing Counsel for the respondents no. 1 and 2.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 21.08.2004 and 13.04.2005 passed by the respondent no. 1.

Briefly stated, an application under section 21 (1) (a) of U.P. Act No. 13 of 1972 was filed by the landlord/respondents no. 3 to 6 on the ground that the Deep Lal Shah is completely unemployed and there are ten members in the family and he has good experience of business. He has got two small children and due to the paucity of the accommodation, he is to live in

his *Sasural* at Almora and therefore, the premises is required for doing business and for residential purposes.

So far as the respondent no. 5 Bhagwan Lal Sah is concerned he is also doing business at Thana Bazar in one room belonging to one Kanta Prasad Shah and he is insisting him to vacate the premises and therefore, bona fide need and comparative hardship lies in his favour.

Both the parties have filed their affidavits in support of their case. Kailash Chandra Durgapal has admitted this fact that Case No. 7 of 1999 has been instituted by him for the eviction. Other affidavits are also on the record i.e. of Raje Tiwari and Jamal Siddiqui, who have also deposed that the landlord has no other available shop to accommodate the family members. The prescribed authority after considering the entire evidence on the record has come to the conclusion that the need of the landlord is bonafide and comparative hardship lies in his favour.

The petitioners went in appeal. The appellate Court has also confirmed the finding of bonafide need and comparative hardship in favour of the respondents. The said finding of the appellate authority is quoted below:-

"22. सर्वप्रथम यह देखना है कि विवादित परिसर में कितना स्थान है। उभय पक्ष को यह स्वीकार है कि विवादित परिसर में एक दुकान है। अपीलार्थी के द्वारा अपने शपथपत्र में यह स्वीकार किया गया है कि उक्त दुकान में उसका पुत्र कन्फेक्शनरी का व्यापर करता है। अतः यह तथ्य स्पष्ट हो जाता है कि विवादित परिसर में दुकान है। विवादित परिसर में दुकान के साथ एक कमरा है। कमरा होना प्रार्थी–प्रतिउत्तरदाता के द्वारा कथित किया गया है। यद्यपि अपीलार्थी के द्वारा दो कमरे होना कथित है प्रार्थी–प्रतिउत्तरदाता के द्वारा शपथपूर्वक कथन किया गया है विवादित परिसर में एक कमरा था जो गोदाम के रूप में काम आता था जिसे अपीलार्थी के द्वारा पार्टीशन करके दो कमरे का रूप दे दिया है। श्री महेन्द्र पाण्डे ने शपथपत्र 21 ग एवं श्री

ईश्वरी दत्त ने शपथपत्र 22 ग प्रस्तुत कर शपथपूर्वक कथन किया है कि यह परिसर शपथकर्ता का देखा हुआ है और प्रार्थी–प्रतिउत्तरदाता के पिता ने विपक्षी गोविन्द कपिल को दुकान हेतु दिया था और इसका प्रयोग वाणिज्य प्रयोजन के लिये किया जाता है। श्री गोविन्द बल्लभ ने अपने शपथपत्र 26–ग के प्रस्तर –2 में यह कहा है कि इस भवन में दो कमरे हैं एवं एक गोदाम है। यह भी स्वीकार किया गया है कि प्रार्थीगण के द्वारा मुझसे भूतल की मंजिल में एक कमरा कुछ वर्ष के बाद खाली कराया गया था। यद्यपि गोवर्धन भट्ट के द्वारा अपना शपथपत्र प्रस्तुत कर दो कमरे होना कथित किया गया है। अपीलार्थी के द्वारा यह स्वीकार किया गया है कि जो कमरा उससे कुछ सयम पूर्व खाली कराया गया था वह वहाँ प्रार्थी के द्वारा गोशलखाना बना लिया गया है। इस प्रकार समस्त उपलब्ध साक्ष्य से ये प्रतीत होता है कि विवादग्रस्त परिसर में दुकान, कमरा एवं एक गोशलखाना स्थित है। समस्त साक्ष्य से वस्तुस्थिति इस प्रकार प्रतीत होती है कि अपीलीर्थी विवादग्रस्त सम्पत्ति में दुकानदारी करता है जिसके पीछे एक कमरा है जो पूर्व में गोदाम के काम आता था। हो सकता है कि वर्तमान में उसे कमरे के प्रयोग में लाया जा रहा हो परन्तु यदि अपीलार्थी एक कमरे में रह रहा है तो उसे आवासीय सम्पत्ति का पूर्ण रूपेण दर्जा नहीं दिया जा सकता है बल्कि यह प्रतीत होता है कि वह भाग भी उक्त विवादग्रस्त दुकान का ही भाग है, अतः मेरी रायम में यह तथ्य भी अपीलार्थी को कोई फायदा नहीं दे सकता और विद्वान अवर न्यायालय के द्वारा दिया गया निष्कर्ष उचित है।"

So far as the comparative hardship is concerned, the finding has been recorded in favour of the landlord. The same is quoted below:-

"23. जहाँ तक तुलनात्मक कठिनाई का प्रश्न है, अपीलार्थी की तरफ से यह तर्क दिया गया कि विवादित परिसर में अपीलार्थी करीब 35 वर्ष से व्यवसाय कर रहा है। उक्त दुकान के सम्बन्ध में बाजार में एक गुडविल है और यदि उसको दुकान से बेदखल कर दिया जाता है तो उसे अत्यधिक कठिनाई प्रार्थी की तुलना में होती है क्योंकि प्रार्थी अपना व्यवसाय कहीं भी कर सकता हैं जबकि अपीलार्थी के लिये अपना व्यवसाय अन्यत्र करने के लिये कोई साथन नहीं है। यह सही है कि यदि कोई व्यक्ति

किसी व्यवसायिक परिसर से बेदखल कर दिया जाता है तो उसे परेशानी होगी, परन्तु यह प्रार्थना पत्र को निरस्त करने का आधार नहीं है।"

So far as bonafide need is concerned, in ***Mst. Bega Begum V/s Abdul Ahmad Khan 1979 A.I.R. SC page 272,*** the apex Court has held as under:-

"The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that in spite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for out weight the prejudice or the inconvenience which may likely be caused to the tenants."

So far as comparative hardship is concerned, in case of ***Shushila v. IInd Additional District Judge, Banda and others reported in 2003 (1) A.I.R. Page 256,*** It has been held as under: -

"A bare perusal of rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause 9b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant."

I see no reason to disagree with the findings of the courts below on the bonafide need and comparative hardship.

The findings recorded by the courts below being findings of fact no interference is required in view of the ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** where the Apex Court has held as under:-

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

" Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

" A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

" The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition

invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

"The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

"As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

Relying upon the judgment of ***Bhaichand Ratanshi v. Laxmishanker Tribhoyan (1981) 3 SCC 502 in Om Prakash Vs. Bhagwan Das (1986) 2 SCC 428,*** it has been held as under:-

"Admittedly, the appellant and the respondent are displaced persons and the authorities held that since the appellant was living in rented premises there was no reason why he should be deprived of the beneficial enjoyment of his own property.

2. In Bhaichand Ratanshi v. Laxmishanker Tribhoyan this Court interpreting the analogous provisions in Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 observed: (SCC p. 506 para 5)

The legislature by enacting Section 13 (2) of the Act seeks to strike a just balance between the landlord and the tenant so that the order of eviction under Section 13 (1) (g) of the Act does not cause any hardship to either side. The considerations that weight in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting and analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c.32), Section 3 (1), Schedule I, para (h) : Sims v. Wilson (1946) 2 All ER 261; Fowle v. Bell (1946) 2 All ER 668, Smith v. Penny (1946) 2 All ER 672: Chandier v. Strevett (1947) 1 All ER 164 and Kelley v. Goodwin (1947) 1 All ER 810. One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The court would have to put ion the scale other circumstances which could tilt the balance of hardship on either side, including financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and extent of the business or other requirement of residential accommodation, as the case mat be. It must, however, be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor. On the issue of greater hardship the English courts have uniformly laid down that the burden of proof is one the tenant. We are inclined to the view that on the terms of Section 13 (2) of the Act, the decision cannot turn on mere burden of proof, but both the parties must lead evidence, The question whether or not there would be greater

hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case.

4. There was no infirmity in the order of the Prescribed Authority or that of the learned II Additional District Judge. The refusal of the application of the landlord under Section 21 (1) (a) of the Act would undoubtedly cause greater hardship to him as that would deprive him of his beneficial enjoyment of his own property. In such a case, it could not be said that the landlord had not fulfilled the requirement of the 4th proviso to Section 21 (1) (a) of the Act The High Court obviously committed an error in interfering with the findings of the Prescribed Authority and the learned II Additional District Judge on the ground that the landlord had failed to fulfill the requirements of the 4th proviso to Section 21 (1) (a) of the Act."

In view of the aforesaid equities, need of both the parties shall be satisfied as in Writ Petition No. 800 of 2006 (ms) the petitioner is a tenant of the respondents and he has also instituted the proceedings for eviction and eviction decree has been granted in 730 of 2006 (ms) and therefore, both the parties shall vacate the premises by 31st May, 2007.

In view of the aforesaid findings, I see no reason to interfere under Article 226/227 of the Constitution of India. However, writ petition lacks merit.

Petitioners have sought time to vacate the premises. Time is granted upto 31st May, 2007. provided:-

(a) undertaking is furnished by 30th August, 2006 to vacate the premises by 31st of May, 2007.

(b) the petitioners pay the entire rent and damages due up to date by 30th of August, 2006.

(c) the petitioners pay regularly the damages by 1st week of every month.

(d) In case of failure of aforesaid conditions, the respondent/landlord shall be at liberty to execute the decree forthwith.

Consequently, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

18.07.2006

Rathour